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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

Application No. : 10/514,412
Confirmation No. : 4371
Applicant : Da Silvo Neto et al
Filed : Nov. 15, 2004
Title : VARIABLE FIELD DEVICE FOR PROCESS AUTOMATION
TC/A.U. : 2112
Examiner : H. Singh
Docket No. : DASI3001/FJD
Customer No. : 23364

REPLY BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

INTRODUCTORY COMMENTS

Pursuant to the provisions of 37 CFR 41.41, submitted herewith is
Applicant/Appellant's Reply Brief on Appeal.

In the Examiner's Answer, issued on June 18, 2009, in the "Response to
arguments, several points are raised which require commentary.

(1)

The examiner comments on page 9, that "Appellant states.....Gillen does
not disclose a modular design," and then advises that he "disagrees," asserting
"First the Appellant describes the problem in the art as if a Coriolis mass
flowmeter is [sic] replaces with electromagnetic flow meter it necessitates the
replacement of entire field device (page 3, lines 19 - 21 original disclosure) and
then provides solution with a programmable field device for process automation."

COMMENT: The examiner's point is not understood. Why does a reference to the statement of the problem addressed by Applicant/Appellant convert Gillen to a reference having modular units? It is not clear, and even understood in its best light, it does not.

The discussion of the problem addressed in one document (the application) has no bearing on what is taught in another document (Gillen). Gillen does not teach a design including modular components.

(2)

The examiner comments on pages 9 and 10, that "Gillen is principally teaching the same idea of programmable filed device that is programmed during the start of initialization to realize different functionalities (paragraphs 0003 and 0028) without replacement of the entire field device."

COMMENT: Paragraph [0003] does not mention programming at all. Paragraph [0028] mentions the storage of a control program during initialization in memory. It does not mention "reprogramming." using a logic device as does claim 10 . The reprogramming is somewhat different than what Gillen had in mind. Moreover, there is no reason not to believe that Gillen does not envision replacement of the entire filed device.

(3)

The examiner comments on page 10, that "Appellant concedes that the reconfigurable logic device is such as that available from Altera.....that means the

claimed reconfigurable logic device that configures at start is not the inventive idea in the present application.”

COMMENT: The examiner is correct in that on page 7 of the specification, in lines 3 - 5, Applicant/Appellant does mention that the logic device LD is known. However, why is this detrimental to patentability? Applicant/Appellant knows of no part of the patent law which lays down a rule that one element of a claim must provide the “inventive idea” of the invention, so that if there is no such element, the invention cannot be patented. What is being claimed is a novel variable field device and not merely a logic device.

(4)

The examiner comments on page 10, that “Appellant state that Stinus does not disclose the modules are in the form of reprogrammable logic device, and does not provide reconfiguration of hardware and software at start. The examiner disagrees,” and cites on page 11, paragraphs [0002], [0005], [0006], [0008] and [0049].

COMMENT: None of the noted passages mention reprogramming as suggested by the examiner. And, Stinus does not disclose the match between the reprogrammable logic device and the sensor module as recited in claim 10.

(5)

The examiner refers on page 11 to “reprogramming” in Stinus citing paragraphs [0049]

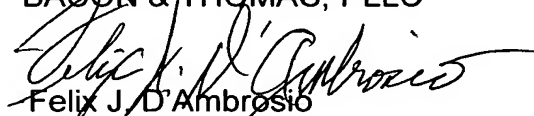
U.S. Pat. Appl. 10/514,412

COMMENT: Paragraph [0049] of Stinus mentions reprogramming in the context of reconfiguring the field mounted device electronics. It does not refer to a reprogramming of "both hardware and software on said reprogrammable logic device LD in a desired fashion thereby matching the particular demands of the application of said sensor module SM."

Date: August 18, 2009

Respectfully submitted

BACON & THOMAS, PLLC



Felix J. D'Ambrosio
Reg. No. 25,721

BACON & THOMAS, PLLC
625 Slaters Lane, 4th Floor
Alexandria, VA 22314
Tel: (703) 683-0500
Fax: (703) 683-1080
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